

EXHIBIT 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE WESTERN DISTRICT OF MISSOURI
3
4

MAXUS REALTY TRUST, INC.,)

5)

Plaintiff,)

6)

vs.) Case No. 06-0750-CV-W-ODS

7)

RSUI INDEMNITY COMPANY)

8)

Defendant.)

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11
12 DEPOSITION OF
13 MICHAEL P. McROBERT
14 TAKEN ON BEHALF OF THE DEFENDANT
15 JULY 31, 2007
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| <p style="text-align: right;">Page 6</p> <p>1 topics, so just fire away.</p> <p>2 MS. MURPHY: Okay.</p> <p>3 A. Do you do anything with that or --</p> <p>4 Q. (By Ms. Murphy) You can hold on to it.</p> <p>5 Sir, we're going to take your deposition</p> <p>6 much like we took yesterday that you partially sat</p> <p>7 in on. And just to reiterate the rules, I'm not</p> <p>8 sure if you sat in at the beginning, but we'll be</p> <p>9 asking questions relative to the losses sustained</p> <p>10 by Maxus and to the extent that you answer them</p> <p>11 I'm going to presume that you understood my</p> <p>12 question; is that fair?</p> <p>13 A. Yes.</p> <p>14 Q. If you don't understand my question, just let me</p> <p>15 know and I'll rephrase it so that you are</p> <p>16 comfortable answering it in the form that I ask</p> <p>17 it, correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. And you understand that in giving</p> <p>20 testimony today it's no different than if you were</p> <p>21 giving testimony in a court of law before a judge</p> <p>22 and jury?</p> <p>23 A. Yes.</p> <p>24 Q. And you recognize, of course, that a transcript</p> <p>25 will result from this hearing and it may be used</p> | <p style="text-align: right;">Page 7</p> <p>1 at the time of trial --</p> <p>2 A. Yes.</p> <p>3 Q. -- to the extent that it goes to trial? Okay,</p> <p>4 thank you.</p> <p>5 Can you give me your full name, please.</p> <p>6 A. Michael Paul McRobert.</p> <p>7 Q. And who do you work for, sir?</p> <p>8 A. Maxus Properties, Inc.</p> <p>9 Q. Is that different than Maxus Properties Trust?</p> <p>10 A. Maxus -- I'm not familiar with Maxus Properties</p> <p>11 Trust. I think you mean --</p> <p>12 Q. Correct.</p> <p>13 A. -- Maxus Realty Trust, Inc.</p> <p>14 Q. Thank you.</p> <p>15 A. Yes, it is.</p> <p>16 Q. How so?</p> <p>17 A. Maxus Properties, Inc., is a management company.</p> <p>18 Maxus Realty Trust, Inc., is a publicly-traded</p> <p>19 entity on the NASDAQ but has no employees.</p> <p>20 Q. Does Maxus property, Inc. -- can we refer to it as</p> <p>21 MPI for short?</p> <p>22 A. That's what I do.</p> <p>23 Q. It has employees?</p> <p>24 A. Yes.</p> <p>25 Q. Approximately how many employees?</p> |
| <p style="text-align: right;">Page 8</p> <p>1 A. 280.</p> <p>2 Q. Including yourself?</p> <p>3 A. Yes.</p> <p>4 Q. And what title, if any, do you hold at MPI?</p> <p>5 A. Chief executive officer and president. I think</p> <p>6 I'm a director also.</p> <p>7 Q. How long have you held these positions?</p> <p>8 A. Since July of 2004.</p> <p>9 Q. How long have you been with the company in total?</p> <p>10 A. July of 2004.</p> <p>11 Q. When you started working for MPI did you</p> <p>12 immediately start working in the positions of</p> <p>13 chief executive officer, president and perhaps</p> <p>14 director?</p> <p>15 A. Yes.</p> <p>16 Q. Prior to July 2004 where did you work?</p> <p>17 A. Sunway Hotel Management, Inc.</p> <p>18 Q. What is that?</p> <p>19 A. A hotel management company.</p> <p>20 Q. Where are they based out of?</p> <p>21 A. Overland Park, Kansas.</p> <p>22 Q. How long were you there for?</p> <p>23 A. Two tours of duty.</p> <p>24 Q. What does that mean?</p> <p>25 A. I was there from '86 to '90 and from '95 to '04.</p> | <p style="text-align: right;">Page 9</p> <p>1 Q. Were they set terms?</p> <p>2 A. No.</p> <p>3 Q. I'm used to when you hear terms of duty --</p> <p>4 A. Tours of duty.</p> <p>5 Q. Tour of duty, right. Okay.</p> <p>6 Did you go anyplace in between '90 and</p> <p>7 '95?</p> <p>8 A. Yes.</p> <p>9 Q. Where was that?</p> <p>10 A. Ruhl and Company.</p> <p>11 Q. And what is the nature of that business?</p> <p>12 A. A valuation business.</p> <p>13 Q. Valuation of what?</p> <p>14 A. Real estate, commercial real estate.</p> <p>15 Q. Do you have a commercial real estate license?</p> <p>16 A. No.</p> <p>17 Q. Do you maintain any licenses?</p> <p>18 A. No.</p> <p>19 Q. Appraisal, valuation or anything else, any</p> <p>20 licensures?</p> <p>21 A. No.</p> <p>22 Q. Are you -- do you maintain any certifications?</p> <p>23 A. No.</p> <p>24 Q. Prior to today did you have any licenses or</p> <p>25 certifications that you've since given up?</p> |

1 A. In isolation.
 2 Q. I agree. Thank you.
 3 MR. ABRAMS: Why are you thanking him?
 4 MS. MURPHY: Because I do it out of
 5 habit.
 6 Q. (By Ms. Murphy) I'll ask you now to turn to
 7 MAXUS145 within the First Specialty policy. And
 8 you'll see in Subsection d on the left-hand side,
 9 do you see that, sir?
 10 A. Uh-huh.
 11 Q. You were present during yesterday's testimony of
 12 DeAnn Totta; were you not?
 13 A. Yes.
 14 Q. And --
 15 A. Some of it.
 16 Q. Some of it. And do you recall her testifying on
 17 this particular provision?
 18 A. No.
 19 Q. Can you take a moment and read that paragraph.
 20 A. (Witness complies.)
 21 Q. You could stop at d(2).
 22 A. Okay.
 23 Q. If you turn to page MAXUS144, you'll agree with me
 24 that Subsection d falls under Paragraph 3, the
 25 replacement costs, correct?

1 to Section d, since Maxus did not repair or
 2 replace the damaged property, under the First
 3 Specialty property they had no obligation to
 4 provide coverage on a replacement cost basis?
 5 MR. ABRAMS: She's talking about First
 6 Specialty.
 7 Same objection, but you can answer if you
 8 know.
 9 A. I mean, I would defer that -- I don't know that
 10 I've got the expertise in insurance to opine to
 11 that.
 12 Q. (By Ms. Murphy) Well, I'm just going by the basic
 13 wording of Section d, sir.
 14 MR. ABRAMS: Is there a question?
 15 MS. MURPHY: Yes.
 16 Q. (By Ms. Murphy) And the question is, the policy
 17 says -- the First Specialty policy says they will
 18 not pay on a replacement cost basis for any loss
 19 or damage unless it's actually repaired or
 20 replaced; does it not?
 21 A. Yes.
 22 Q. Following this language and inserting Maxus into
 23 this Paragraph d, according to the First Specialty
 24 policy, First Specialty has no obligation to pay
 25 Maxus on a replacement costs basis because they

1 A. Yes.
 2 Q. Would you agree with me, sir, that pursuant to
 3 Section d, according to the First Specialty
 4 policy, until the lost or damaged property is
 5 actually repaired or replaced First Specialty will
 6 not pay on a replacement cost basis for any loss
 7 or damage?
 8 A. Yes.
 9 Q. Would you agree with me that because Maxus Realty
 10 has not repaired or replaced the damaged property
 11 under this language, under the First Specialty
 12 language, they would not have been entitled to
 13 replacement costs?
 14 MR. ABRAMS: Objection, calls for a legal
 15 conclusion.
 16 You can answer if you know.
 17 A. I guess, no, I wouldn't agree with you from a
 18 standpoint that we've never had a settlement offer
 19 that put us in a position to replace.
 20 Q. (By Ms. Murphy) I understand that's the position
 21 of Maxus. I'm referring exclusively to this
 22 language. I'm saying that under the terms of
 23 Section d, would you agree with me that because --
 24 and I understand that Maxus has its reasons, which
 25 we've discussed. But just exclusively referring

1 have not repaired or replaced the property as
 2 Section d requires; would you agree with that?
 3 MR. ABRAMS: That's the same question you
 4 asked before. You can give --
 5 MS. MURPHY: I reformulated it.
 6 MR. ABRAMS: Right, but it's the same
 7 thing.
 8 MS. MURPHY: I understand that, but I
 9 didn't get an answer before.
 10 MR. ABRAMS: Yeah, he did. He said he
 11 didn't know.
 12 MS. MURPHY: Please stop coaching the
 13 witness.
 14 A. Well, my statement I think previously, and I'll
 15 stay with it, is --
 16 MR. ABRAMS: Please stop restating the
 17 question.
 18 A. -- I would defer that to either counsel or an
 19 expert in insurance.
 20 Q. (By Ms. Murphy) Is Section d confusing to you?
 21 A. The context of it.
 22 Q. Can you identify what's confusing about d? With
 23 the opening paragraph, "We will not pay on a
 24 replacement cost basis for any loss or damage," is
 25 that confusing?

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| <p style="text-align: right;">Page 118</p> <p>1 Q. Was that -- to the best of your recollection, did 2 that occur during that meeting of July 2006? 3 A. I honestly don't remember. 4 Q. But at any time between May 31st, 2006, up until 5 the date that the complaint was filed, which was 6 on or about September 7, 2006, had you or anybody 7 at Maxus indicated that the claim was subject to 8 change? 9 MR. ABRAMS: Objection, lack of 10 foundation. 11 If you know you can answer. 12 A. I'll answer yes from a standpoint that we were 13 having settlement discussion and trying -- there 14 were numerous discussions about how to attempt to 15 settle the claim and find some kind of common 16 ground. 17 Q. (By Ms. Murphy) Were there any communications by 18 and between yourself and any representative of 19 Maxus and Engle and Martin indicating that these 20 numbers were going to change or increase? 21 A. I think as we sat at the table and had discussions 22 as far as where we were picking and drawing lines 23 it was a fluid situation. 24 Q. Would that be, no, there are no documentations or 25 communications by and between the parties other</p> | <p style="text-align: right;">Page 119</p> <p>1 than those orally made during that meeting? 2 A. Any communications would have been oral at that 3 point. 4 Q. And this claim did not get modified until some 5 point into the litigation for the purposes of 6 litigation; is that correct? 7 A. The claim was further refined and better 8 documented for the purposes of litigation. 9 Q. Can you tell me in what way the claim was refined 10 and better documented? 11 A. Just in the experts, the consultation that was 12 performed by -- Flagship was engaged by our legal 13 counsel for internal purposes towards trying to 14 come up with a number to settle the deal. 15 Q. Was there any aspect of the Flagship estimate that 16 Maxus deemed to be inadequate, insufficient or 17 something else? 18 A. Yes. 19 Q. What was that? 20 A. The fact that it didn't include the first floor. 21 Q. And do you believe that that was a mistake by 22 Flagship? 23 A. I think it was a -- it was a bright line that was 24 drawn in some attempt to find middle ground for 25 settlement purposes.</p> |
| <p style="text-align: right;">Page 120</p> <p>1 Q. Back in December of 2005? 2 A. Yes. 3 Q. Settlement with whom? 4 A. Well, in trying to come up with a number to 5 negotiate toward. 6 Q. With First Specialty? 7 A. With First Specialty as well, yes. 8 Q. Well, we had just discussed the fact that this 9 claim had not even been presented to RSUI until 10 May of 2006; isn't that accurate? 11 A. Like I say, I lose track of the two. I'm not even 12 sure -- can you tell me what date we settled with 13 First Specialty? 14 Q. In or about February of 2007. 15 A. Okay. Brian O'Connor -- 16 MR. ABRAMS: 2007. 17 MS. MURPHY: You would be in a better 18 position to have that information. I don't have 19 the release information. 20 MR. ABRAMS: That was produced. 21 MS. MURPHY: I don't know because I asked 22 Mr. O'Connor to look through his records and 23 unfortunately he has to see if he can get it from 24 First Specialty. 25 MR. ABRAMS: The date of the release is</p> | <p style="text-align: right;">Page 121</p> <p>1 May 18, 2006. 2 MS. MURPHY: Okay, thank you. 3 Q. (By Ms. Murphy) With that said, is it your 4 opinion that -- or the position of Maxus that the 5 Flagship estimate was inadequate or deficient 6 because it did not quantify damage to the lower 7 floor? 8 A. Yes. 9 Q. And it is your belief or opinion that they did not 10 quantify the damage to the lower floor because an 11 effort towards settlement was endeavored between 12 First Specialty and Maxus? 13 A. Yes. 14 Q. And would you agree with me that at that time no 15 claim had been presented to RSUI in or about 16 December of 2005 when that bright line was issued? 17 A. Yes. 18 MR. ABRAMS: I would object that it 19 lacked foundation. 20 If you know. 21 Q. (By Ms. Murphy) Who retained Flagship on behalf 22 of Maxus? 23 A. Rob Thomson. Robert Thomson. 24 Q. He is the general counsel for Maxus Realty? 25 A. No.</p> |